

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Telephone Number Portability

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CC Docket No. 95-116

**AT&T REPLY COMMENTS IN RESPONSE TO BELL SOUTH CORPORATION
PETITION FOR DECLARATORY RULING AND/OR WAIVER**

AT&T Corp. ("AT&T") hereby submits these reply comments in response to BellSouth Corporation's Petition for Declaratory Ruling and/or Waiver of the Commission's rules ("BellSouth Petition") seeking the recovery of costs incurred in implementing wireless local number portability ("WLNP").¹ In response to the BellSouth Petition, a number of parties have filed comments seeking a blanket waiver permitting all similarly situated ILECs to recover their WLNP costs.² The BellSouth Petition, and each of the requests filed in response, should not be granted unless and until each ILEC has shown that the costs it seeks to recover are directly related to and would not have been incurred but for the implementation of WLNP.³

¹ On November 10, 2003, the Commission determined that its WLNP rules would go into effect on November 24, 2003. *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 03-284 (rel. Nov. 10, 2003).

² See, e.g. SBC, at 3 ("BellSouth contends that a waiver of this rule is appropriate and in the public interest. For the reasons discussed below, SBC agrees and asks the Commission to waive its rules, not only for BellSouth, but for all similarly situated incumbent LECs."); USTA, at 5 ("USTA would encourage the FCC to grant BellSouth's Petition and extend the recovery period beyond the maximum five years and/or modify the current rate, so that all ILECs may be allowed to recoup the costs associated with WLNP implementation.")

³ Recovery of ILEC WLNP charges is not limited to end users of ILEC services. An ILEC

Section 1.2 of the Commission's rules provides that "[t]he Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."⁴ The Commission has made it clear that ILECs may recover local number portability costs from end users in federally tariffed monthly charges.⁵ While a few parties have asked the Commission to clarify that its local number portability cost recovery rules apply to costs incurred in implementing WLNP, no party disputes that the Commission has permitted ILECs to recover these WLNP costs. As Verizon states, "[t]he costs of LEC-CMRS portability are part of the cost-recovery system the Commission established in 1998."⁶ Because there is neither controversy nor uncertainty in this regard, the issuance of a declaratory ruling is unnecessary.

"may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and/or Feature Group A access lines, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(i) of this section, as if the incumbent local exchange carrier were serving those carriers' end users." 47 C.F.R. §52.33(a)(1)(ii).

⁴ 47 C.F.R. §1.2. BellSouth claims (at 8) that "[f]or clarity, the Commission should issue a declaratory ruling that incumbent LECs are entitled to recover the costs to implement WLNP through charges imposed on end-users."

⁵ *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *Third Report and Order*, 13 FCC Rcd 11701(1998) ("*Third Report and Order*") ¶¶ 75, 142-46. According to the Commission, "[c]reating an optional end-user charge for incumbent LECs ensures that such carriers have a reasonable opportunity to recover their costs and at the same time allows carriers to forego some or all of such charges if they deem it necessary to compete in the local service market." *Id.* at ¶ 139.

⁶ Verizon, at 2 ("The Commission ordered LEC-CMRS number portability in 1996 [citation omitted] and it has never suggested that the costs of providing that capability are any different from the carrier-specific costs of number portability that are recoverable under the Act and section 52.33 of the Commission's rules. Nor has it suggested that an ILEC's share of the increased cost that CMRS portability imposes on the shared industry systems is not a recoverable cost."). *See also*, CenturyTel, at 3 ("Notably, the Commission did not in any way limit its discussion of number portability cost recovery to the context of wireline-to-wireline number portability").

The crux of BellSouth's claim is that a waiver is needed because Section 52.33 of the Commission's rules bars BellSouth from recovering an array of costs related to the provision of WLNP that could neither be identified nor quantified when BellSouth filed its LNP tariffs.⁷ No party disagrees with BellSouth's claim that WLNP costs could not be fully quantified until recently, or that BellSouth's current end-user charge does not recover all of the costs it has incurred to implement WLNP. Due to the omission of WLNP costs from its original cost study, BellSouth claims, end users have been substantially undercharged.⁸ In their comments, the ILECs make virtually identical claims with respect to their own WLNP costs.⁹

While there is general agreement that the ILECs must have a reasonable opportunity to recover their WLNP costs, the comments raise a significant concern that these costs may be doubly recovered from carriers and end users. Verizon Wireless, for example, challenges BellSouth's recovery of WLNP costs through transactions-based charges imposed on wireless carriers and their customers, stating "BellSouth should not be permitted to adjust its end-user LNP charge until there is a full accounting of all of its

⁷ BellSouth Petition, at 2; 47 C.F.R. §52.33(a)(1).

⁸ BellSouth seeks to recover approximately \$38 million in costs. BellSouth Petition, at 11 and Attachment A.

⁹ See SBC, at 3 ("First, like BellSouth, SBC has incurred, and will continue to incur, substantial additional cost to implement inter-modal WLNP. Given the state of the deployment of WLNP at the time the existing end-user charges were tariffed, SBC and other incumbent LECs could not, and did not, include these direct costs of implementing inter-modal LNP in their tariffed cost recovery charge."); Verizon, at 3 ("These uncertainties led Verizon not to try to project the costs of LEC-CMRs number portability. If Verizon had included in its 1999 tariff filing projected costs based upon what it then understood about CMRS number portability, those projections would have been dead wrong; for example, they would have had Verizon incurring almost all these costs more than three years before it actually did so.")

inter-carrier LNP assessment revenue, so as to preclude double recovery.”¹⁰ AT&T’s comments show that BellSouth must not be permitted to impose OSS, network modification or overhead costs recovered in other rate elements upon CLECs and their customers who purchase the ILECs’ unbundled network elements.¹¹

The ILECs argue that there is no cause for concern, and suggest that waivers permitting ILECs to recover their WLNP costs should be freely granted. Verizon suggests that no detailed analysis is necessary because Verizon is free to recover any WLNP cost that is “analogous to” the LNP costs it recovered in its 1999 tariffs.¹² SBC presents no cost totals, no cost studies, and nothing more than a chart of its current monthly end user charges, stating only that “SBC’s present end-user charge does not compensate SBC for the carrier-specific costs directly related to providing inter-modal WLNP.”¹³ Each carrier claims that while it could not determine its WLNP costs with any degree of accuracy in 1999, the time to recover these costs is now.¹⁴ If now is the time to recover these WLNP costs, then now is the time for each carrier to identify and to justify the WLNP costs it seeks to recover.

¹⁰ Verizon Wireless, at 2.

¹¹ AT&T, at 12-17.

¹² Verizon, at 5. (“While a carrier may recover the costs incurred in ‘the querying of calls and the porting of telephone numbers from one carrier to another,’ it may not recover ‘costs incurred as an incidental consequence of number portability.’ [citation omitted] The costs Verizon seeks to recover now are all analogous to costs the Commission permitted Verizon to recover through a surcharge added in 1999 and meet this test.”)

¹³ SBC, at 7, 13-14.

¹⁴ SBC, at 10 (“It is because SBC was not able to include those costs in its end-user charges back in 1999 that allowing cost recovery now is appropriate and relief should be granted”); Verizon, at 2 (“[N]ow is the appropriate time for the Commission to allow ILECs to recover these costs under that system.”)

The Commission has made it clear that in the tariff review process, changes in the amount of the local number portability charge, or extensions of the recovery period will *not* be freely granted:

“After a carrier establishes its levelized end-user charge in the tariff review process we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set. Furthermore, once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis. Carriers can recover any remaining costs through existing mechanisms available for recovery of general costs of providing services.”¹⁵

In establishing a tariff-based mechanism for recovering local number portability costs, the Commission expected that carriers would establish “levelized” LNP charges, and would recover only those costs directly related to local number portability within a finite period.¹⁶ The requirement that ILECs recover cost-based local number portability charges within this time frame places the burden of justifying any change in the recovery mechanism squarely on the ILEC seeking to recover additional costs.¹⁷

¹⁵ *Third Report and Order*, ¶ 144. As Sprint acknowledges (at 1-2), the Commission staff has advised it to remove over \$10 million of OSS costs from its initial WLNP cost filing, deeming those costs to be speculative. Prior Commission LNP tariff investigations have produced substantial reductions in ILEC LPN rates covering the initial five-year recovery period. *See Telephone Number Portability*, CC Docket No. 99-35, *Memorandum Opinion and Order*, FCC 99-158 (rel. July 1, 1999) (reducing number portability charges filed by Ameritech (by \$83 million), GTE (by \$28 million), Pacific Bell (by \$319 million) and Southwestern Bell (by \$154 million)). *See also Telephone Number Portability*, CC Docket No. 99-35, *Memorandum Opinion and Order* (rel. July 16, 1999) (reducing U S WEST’s number portability charges by \$118 million).

¹⁶ *Third Report and Order*, ¶ 143. According to the Commission, a “levelized” rate is one that is “calculated to remain constant over a recovery period and is set at the level at which the discounted present value of the stream of payments is equal to the discounted present value of the stream of costs over the period.” *Id.* at fn. 478.

¹⁷ *See, e.g. Number Portability Query Services, Order Designating Issues for Investigation*, CC Docket No. 98-14 (rel. June 17, 1998) 13 FCC Rcd. 12063, ¶ 9 (“Bell Atlantic provides many

As USTA correctly observes, “individual carrier specific WLNP implementation costs may vary based on the modifications required of the network.”¹⁸ Because each ILEC incurs unique costs in implementing WLNP, each ILEC must come forward with a detailed accounting of its network modification costs and other costs claimed to be attributable to local number portability services. Each ILEC must show that the costs it seeks to recover are *not* initial implementation costs recovered in the charges the ILEC has imposed on end users since 1999, do *not* support other services in addition to WLNP, and would *not* have been incurred but for the Commission’s order putting its wireless local number portability rules into effect.¹⁹ The Commission has made clear that ILECs may recover only their *incremental* costs that are *directly related* to local number portability and that would not have been incurred *but for* the implementation of number portability.²⁰

The Commission’s “but for” test, as articulated by the Common Carrier Bureau, prohibits compensation of the LECs for costs incurred to provide general network upgrades and other service enhancements that are not directly related to providing local

worksheets, but has not explained them or shown that its calculations include only the costs of providing portability services. In particular, they include substantial amounts of ‘embedded network investment,’ the costs of which may already be recovered in other rates.”)

¹⁸ USTA, at 5 (“The cost of ILEC modifications in design, installation, testing and deployment to accommodate WLNP implementation are substantial. Whatever cost recovery scenario that the FCC may deem appropriate must consider that individual carrier-specific WLNP implementation costs may vary based on the modifications required of the network.”)

¹⁹ *Third Report and Order*, ¶¶ 72-73.

²⁰ In the *Third Report and Order*, the Commission stated that it “[would] consider as carrier-specific costs directly related to the provision of number portability that portion of a carrier’s joint costs that is demonstrably an incremental cost carriers incur in the provision of long-term number portability.” *Third Report and Order*, ¶ 73.

number portability.²¹ Thus, the ILECs must provide more than conclusory information about the nature of these costs and the methods they use to separate costs incurred in providing WLNP from other, seemingly related costs. They must make a convincing showing that their cost studies identify and exclude any costs that are not directly related to WLNP, and include only those costs that would not have been incurred but for the requirement to provide WLNP.²²

In addition, the *Third Report and Order* expressly found that, “[s]ome upgrades will enhance carriers’ services generally, and that at least some portion of such upgrade costs are not directly related to providing number portability.”²³ Accordingly, even if a new investment has been made in response to LNP implementation, the *Third Report and Order* makes it plain that an ILEC may not automatically allocate the entire incremental cost of that investment to number portability surcharges or query charges.²⁴ Nor may the ILECs allocate LNP headcount and associated costs to WLNP services, unless they can

²¹ *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116, RM 8535, *Memorandum Opinion and Order*, 13 FCC Rcd. 24495 (rel. Dec. 14, 1998) (“*Memorandum Opinion and Order*”) ¶ 10 (“Under this test, to demonstrate that costs are eligible for recovery through the federal charges recovery mechanism, a carrier must show that these costs: (1) would not have been incurred by the carrier ‘but for’ the implementation of number portability; and (2) were incurred ‘for the provision of’ number portability service.”).

²² *Third Report and Order*, ¶¶ 72-74.

²³ *Third Report and Order*, ¶ 73 (“We reject requests of some commenters that we classify the entire cost of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade relates to the provision of number portability. Carriers incur costs for software generics, switch hardware, and OSS, SS7 or AIN upgrades to provide a wide range of services and features. Consequently, only a portion of such joint costs are carrier-specific costs directly related to providing number portability.”)

²⁴ *Third Report and Order*, ¶ 68 (“The division between carrier-specific costs directly related to providing number portability and carrier-specific costs not directly related to providing number portability recognizes that some component of the costs carriers incur will provide carriers with benefits unrelated to number portability.”)

demonstrate specifically that WLNP has caused these costs to increase.²⁵ The Commission must not grant the BellSouth Petition, nor place its imprimatur on the claims of similarly situated ILECs, unless and until it is satisfied that each ILEC seeking to recover its WLNP costs has met these more exacting standards.

Finally, assuming that BellSouth – or any other ILEC – justifies the recovery of WLNP costs, the commenters have not agreed on any one of the four scenarios BellSouth has offered for the recovery of such proven WLNP costs.²⁶ In establishing a recovery method, the Commission must ensure that the method ultimately adopted will have a minimal impact on customers and carriers.²⁷ A wholly new charge imposed on individual end users, such as those in Scenarios 2, 3, and 4, may cause confusion and appear to be excessive. Scenario 4, which proposes a much higher one-time charge, is likeliest to generate “rate shock” among consumers. The Commission should also be concerned with minimizing the impact of billing and administering WLNP charges. Systems that are already set up to bill monthly LNP charges would experience the least impact from BellSouth’s Scenario 1, under which the billing of the monthly WLNP charge could be handled as an increase in an existing rate rather than a new end user charge.

²⁵ The *Third Report and Order* establishes that ILECs may include overhead costs in calculations of their LNP costs, but “only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.” *Third Report and Order*, ¶ 74

²⁶ BellSouth’s four alternatives involve increasing the existing end-user LNP charge from \$0.35 to \$0.66 for the remainder of the five year period beginning in January 2004 and ending in May 2004 (Scenario 1); imposing a new charge of \$0.43 for each of three months following May 2004 (Scenario 2); imposing a new but lower charge of \$0.22 for each of six months following May 2004 (Scenario 3); and imposing a one-time charge of approximately \$1.21 on a date determined by the Commission. BellSouth Petition, at 18-20.

²⁷ *Third Report and Order*, ¶ 10 (“We recognize consumers’ sensitivity to end-user charges.”)

CONCLUSION

BellSouth and the ILECs have failed to provide sufficient information to show that the WLNP costs they seek to recover are directly related to the implementation of WLNP and would not have been incurred but for those requirements. Before it permits the ILECs to recover their costs in end user charges, the Commission must make certain that each of the ILECs' cost studies and other supportive materials meets the Commission's exacting standards for the recovery of local number portability costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tom Waddell, do hereby certify that on this 6th day of January 2004, a copy of the foregoing “AT&T Reply Comments in Response to BellSouth Corporation Petition for Declaratory Ruling And/Or Waiver” was served on the following:

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